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No. 977

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

MITSUBISHI INTERNATIONAL CORPORATION,

*Petitioner,*

*against*

STEAMSHIP *PALMETTO STATE* and STATES MARINE CORPORATION OF DELAWARE,

*Respondent.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.*

## BRIEF FOR RESPONDENT IN OPPOSITION.

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MITSUBISHI INTERNATIONAL CORPORATION,

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Steamship *Palmetto State* and STATES MARINE CORPORATION OF DELAWARE,

Respondent.

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***ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.***

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## BRIEF FOR RESPONDENT IN OPPOSITION.

### QUESTION PRESENTED.

Whether large heavy cases containing cargo are packages within the terms of Section 4(5) of the Carriage of Goods by Sea Act of the United States [46 U. S. Code, Section 1304 (5)]—an Act governing the rights, immunities and limitations between shipper and carrier. Can a package cease to be a package because it is of large size and if so, where is the line to be drawn?

### STATEMENT.

Petitioner sued in Admiralty in the United States District Court for the Southern District of New York to

recover $31,091.16 for damage to steel rolls contained in three completely boxed cases. Respondent cross-libeled to recover for damage to the vessel done by the steel rolls when they broke loose from within their cases.

The District Court held the respondent liable for damage to the steel rolls but limited petitioner's recovery to $500 per package or a total of $1500 in accordance with the provisions of Section 4 (5) of the Carriage of Goods by Sea Act. The Court dismissed the cross-libel.

Petitioner appealed to the Court of Appeals for the Second Circuit, which appeal presented the sole question as to whether the District Court was right in limiting liability to $500 per package. The Court of Appeals unanimously affirmed the District Court (R. Vol. II p. 1).

Petitioner sought further review by petitioning for rehearing *en Banc*. The petition for rehearing was denied by the Court *en Banc* consisting of nine judges. (R. Vol. II p. 23a). A memorandum signed by the chief judge stated "No active circuit judge having requested that the case be reheard *en Banc* the petition is denied" (R. Vol. II p. 22a).

Petitioner, who is the shipper of the goods, could have avoided any limitation by declaring the actual value of the goods and paying *ad valorem* freight as provided in the carrier's tariff. No valuation was declared and no extra freight was paid.

The "Statement" in Petitioner's Brief includes statements that are wholly immaterial to the Petition.

## ARGUMENT.

PETITIONER ADVANCES SEVERAL REASONS FOR GRANTING THE WRIT. WE CONTEND THERE IS NOT ANY REASON WHATSOEVER FOR THE GRANTING OF A WRIT AND THE PETITION SHOULD BE DENIED.

### A.

THE QUESTION PRESENTED IS NOT OF IMPORTANCE TO SHIPPERS OF CARGO.

The petitioner's first reason urged for granting the writ is that the question presented is of "vital importance to shippers" whose damage may be limited because of this "package limitation". There is not any merit whatever in this contention. Such limitation can be avoided by a shipper declaring the value of the goods and paying *ad valorem* freight in accordance with the terms of the statute. Presumably any such additional freight would be passed on to the consignee or buyer and ultimately to the consuming or buying public. The petitioner did not choose to declare the value or pay *ad valorem* freight.

In *John Deere & Company* v. *Mississippi Shipping Company*, 170 Fed. Supp. 479 (E. D. La. 1959) the Court held an ocean carrier's liability for damage in the amount of $2,961.16 done to a fully boxed tractor was limited to $500. Judge J. Skelly Wright at pages 481, 482 said:

> "The Act thus gives the shipper an option to avoid the limitation of liability and make the carrier the insurer of the cargo. To exercise this option effectively, the shipper must declare the value of the cargo, insert the declared value in the bill of lading and pay a higher freight rate.
>
> . . . . . .

"Having failed to exercise his option in the prescribed manner, he now asks this Court to relieve him of the limitation he thus accepted."

Another reason this contention of petitioner is without merit is that long before the passage of the Carriage of Goods by Sea Act almost all ocean bills of lading contained similar package limitation clauses which have been consistently upheld by this Court for many years. *Reid* v. *Fargo*, 241 U. S. 541 (1916); *Calderon* v. *Atlas SS. Co.*, 170 U. S. 272 (1898); *The Ansaldo San Giorgio*, 294 U. S. 494 (1934).

In *Reid* v. *Fargo* this Court upheld a bill of lading clause limiting liability to $100 per package unless a value in excess were declared and extra freight that may be agreed on paid, and held the carrier's liability was limited to $100 where a boxed automobile was damaged to the extent of $2724.40.

In England, a Court held as long ago as 1874 that a wagon containing valuable paintings which was loaded on a railroad train was a package under the limitation statute there applicable. *Whaite* v. *Lancashire & Yorkshire R. R. Co.* (1874) L. R. 9 Ex. 67. In that decision, Cleasby, B. said: "It would be absurd to say that the wagon was too large to be a package; plainly, size cannot be a criterion."

Our Courts have repeatedly held large objects to be packages or subject to the $500 limitation. *The SS. Margaret Lykes*, 1944 A. M. C. 1128 (E. D. N. Y.) (not otherwise reported)—an unboxed truck; *Stirnimann* v. *SS. San Diego*, 148 F. 2nd 141 (2nd Cir.) 1945—amusement crane parts; *Middle East Agency* v. *John B. Waterman*, 86 F. Supp. 487 (S. D. N. Y.) 1949—rock crusher shipped in 21 parts, 5 on skids, 11 in crates, 4 in boxes, one part as such, all but the last held to be packages; *Petition of Isbrandsten*

*Company, Inc.*, 201 Fed. 2nd 281 (2nd Cir.) 1953—railroad locomotives; *La Territorial de Sigueros, S. P.* v. *Shepard Shipping Company*, 124 F. Supp. 287 (E. D. N. Y.) 1954—rolls of rayon cord; *Autobuses Modernos S. A.* v. *Federal Mariner*, 125 Fed. Supp. 780 (E. D. Pa. 1954)—a motor bus weighing 15,000 lbs.; *John Deere & Company* v. *Mississippi Shipping Company, supra*—a boxed tractor.

Indeed, in *Gulf Italia Company* v. *The Exiria*, 263 Fed. 2nd 135 (2nd Cir. 1959), the Courts did not hold that a semi-boxed tractor weighing 43,319 lbs. was not a package because of its size, but because it was not completely boxed in or enclosed.

B.

THERE IS NOT ANY CONFLICT AMONG THE JUDGES OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT ON THE QUESTION PRESENTED. IF THERE WERE SUCH CONFLICT, IT WOULD NOT BE A GOOD REASON FOR GRANTING THE WRIT.

Secondly, petitioner urges as a reason for granting the writ, that there is a conflict among the judges of the Court of Appeals for the Second Circuit.

Petitioner, failing to find any conflict between Circuits, suggests this Court should grant a writ because of a supposed difference of opinion on the question presented among the judges of the Court of Appeals. As we shall point out, there is not any such conflict with respect to the question presented among the judges of that Court, but we submit that even if there were such a conflict it would not be a reason for granting the writ. This Court, as far as we are aware, has never granted a writ of certiorari for that reason. Indeed, if such were the case it would follow that whenever a judge of any of the Courts of

Appeals dissented from the Court's decision, a writ should be granted.

Furthermore, it is clear there is not any conflict between the judges of this Court of Appeals. All nine active judges of the Court considered petitioner's application for rehearing and not any of the judges indicated a wish for a rehearing (R. Vol. II p. 23a). There was not any disagreement or dissent.

The only case cited by petitioner on this point, *Gulf Italia Company* v. *American Export Lines, Inc.*, 263 F. 2d 135 (2nd Cir. 1959), is clearly distinguishable. That decision did not involve a fully boxed item. The carrier sought to describe a tractor with its treads entirely exposed and having a covering only on its superstructure as a "package". Compare *John Deere & Company* v. *Mississippi Shipping Co., supra,* where a *fully boxed* tractor was considered a package.

It may also be noted that Circuit Judge Kaufmann sat on the *Gulf Italia, supra,* decision, yet was not interested in a rehearing of this decision. Indeed both the District Court and the Court of Appeals below discussed the *Gulf Italia* in their opinions and found no conflict. In view of this, the lack of any dissent, and the denial of a rehearing by all of the Circuit Judges, petitioner is clearly incorrect in claiming there is a conflict among the Circuit Judges.

C.

THE DECISION OF THE ITALIAN COURT REFERRED TO BY PETITIONER IS NO REASON WHATEVER FOR GRANTING THE WRIT.

Petitioner makes much of the decisions of an Italian trial and intermediate Appellate Court. It seems surprising that petitioner should suggest that this Court

grant a writ of certiorari because such decisions conflict with the decision of our Court of Appeals in this case. Furthermore, those decisions were reversed by the Supreme Court of Cassation of Italy which remanded the case to the lower court to reconsider the question on the basis of the applicable statute, being the Brussels Convention of 1924 as applied by Italian law instead of our Carriage of Goods by Sea Act.

## D.

### The decisions of the District Court and the Court of Appeals below were correct and the statute was properly construed.

In urging that the Courts below did not apply the rules of construction adopted by this Court, the petitioner quite mistakenly considers that the words of this statute, dealing with the carriage of cargoes and goods in ocean commerce, should be construed as if addressed to the common layman. On the contrary, this statute is to be construed as if addressed to shippers, carriers and persons concerned with commercial matters, and particularly with the ocean carriage of goods and cargoes.

*Black's Law Dictionary,* 4th ed. 1951 includes this definition:

> "Package. A bundle put up for transportation or commercial handlings; * * *. A parcel is a small package; 'parcel' being the diminutive of 'Package'. * * * *As ordinarily understood in the commercial world, it means a shipping package.*" (Emphasis added)

A commercial dictionary, namely, *The International Maritime Dictionary* (D. Van Nostrand Company, Inc.

1948) defines package cargo: "Cargo packed in boxes, barrels, crates, wrapped goods, machinery. Also called package freight."

Mr. Justice Frankfurter said in an article "*Some Reflections on the Reading of Statutes,*" 47 Col. L. R. 527, 536 (1947) that:

> "Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men. As Mr. Justice Holmes remarked upon some Indian legislation: 'The word was addressed to the Indian mind.' If a statute is written for ordinary folk, it would be arbitrary not to assume that Congress intended its words to be read with the minds of ordinary men. If they are addressed to specialists, they must be read by judges with the minds of specialists."

It seems preposterous to suggest, as petitioner does, that the word "package" contained in this commercial legislation should be given the same and limited meaning as that given to something one would carry home under his arm, or as Judge Moore said below: "But the layman's conception of a 'package' as something carried under the arm from the corner grocery store is of no significance in deciding what is a package, as specified in 46 U. S. C. A. Sec. 1304 (5). No layman would have agreed with the three British jurists who were so certain that a wagon was a package."

Furthermore, it is perfectly clear that Congress intended that the word "packages" should be given the meaning that the Courts below have given it. As we heretofore pointed out, long prior to this Act this Court had upheld package limitation clauses contained in ocean bills of lading. *Calderon v. Atlas S. S. Co., supra; The Ansalda San Giorgio, supra;* and this Court has applied the limitation

to packages large and small. *Reid* v. *Fargo, supra.* Congress in adopting the Carriage of Goods by Sea Act was aware of such decisions as *Reid* v. *Fargo* and intended that the word "package" should include such cases as are involved in this suit. This is made plain by examining the record of the Hearings before the Committee on Commerce, United States Senate, 74th Congress First Session, on a Bill relating to Carriage of Goods by Sea, May 10, 1935 at pages 38 and 39:

> "The Chairman: Can you make reference, Colonel Barber, to that page of memorandum, so that the record will show it? I am anxious only that the record should be clear on it, because you have to bear in mind most of us are laymen so far as shipping terms are concerned, and it would be well if we knew the reasons for those things.
>
> "Mr. Barber: There is a brief supporting argument on that * * *:
>
> " 'Limitation of Liability. The Harter Act makes no direct reference to valuation clauses. Limitation of liability, however, is permitted, provided it falls short of relieving the carrier from all responsibility for loss or damage arising from the negligence of himself or his servants. Hence it was assumed in a case before the United States Supreme Court that a liability limited to $100 on a car worth $3900 was not improper. The White Bill imposes a liability of $500 per package or customary freight unit; with the parties free to agree upon a higher figure if they wish.'
>
> "Mr. Walter: If I may take up following that, you will note on page 9 of the bill where we fix the maximum amount of *$500 per package*, we say that is supplemented the lines 13 to 18 referred to by the chairman, where we may agree on something higher than that.

> "In other words, *it may be an automobile in the package, and it will be worth considerably more than $500*, and there the primarily interested parties wanted that ante raised." (Emphasis added.)

And in hearings held before another committee, namely, hearings before the Sub-Committee of the Committee of Foreign Relations of the United States Senate, December 22, 1927, the following appears at pages 9-10:

> "Senator Edge: * * * I would like to be assured on that. You say that they can drop overboard a Rolls Royce car and hand me $500 in full amount of damages."
>
> "Mr. Haight: * * * you can get just what the bill of lading says they have to pay you, and no more."

The question is simply—who is going to bear the risk? The following excerpt from the "Report of the Hearing before the Committee on the Merchant Marine and Fisheries", House of Representatives, on March 3, 4, 5 and 10, 1930, at page 34, exemplifies what was before Congress:

> "Mr. Davis: Why should not they be liable for the full value of the package? $500 might be sufficient in most cases, but suppose there is a package worth $50,000, what would $500 recovery amount to?
>
> "Mr. Haight: All you have to do is go to the carrier and say, 'this package is worth $50,000'.
>
> "Mr. Bland: If he declares the value, they are liable?
>
> "Mr. Haight: All he has to do is to declare the value and pay a higher freight rate.
>
> "Mr. Sloan: The provision for that thing is right there."

It is clear that the Courts below were correct and that there are no grounds for granting a writ.

## CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: New York, N. Y.
April 26, 1963.